

INDIANA PUBLIC DEFENDER COUNCIL

Board Meeting
December 11, 2008
Adam's Mark Hotel
Indianapolis, IN

MINUTES

I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council (IPDC) was called to order by Chair Mike McDaniel at 6:07 PM in Director's Row 1 of the Adam's Mark Hotel, Airport. Board members present were Dave Cook, Susan Carpenter, Jeff Lockwood, David Hennessy, Lorinda Youngcourt, and Bob Hill. Board members present by phone were Neil Weisman and Sonya Scott. Staff present were Larry Landis and Loretta Jackson

II. APPROVAL OF MINUTES

The Minutes of the September 20, 2008 meeting were unanimously approved as submitted.

III. LEGISLATION

Larry Landis reported on the following legislation:

- **Recording interrogations:** Senator Talian has agreed to sponsor the bill requiring recording of interrogations and that Sen. Steele has promised a hearing. He also reported that Jessie Cook, a member of the Supreme Court Rules Committee is attempting to get a rule adopted which would eliminate the need for the law.
- **Chief PD pay:** He is looking for a sponsor for a bill requiring that county chief public defenders be paid by the state, as are county prosecutors.
- **Expungement:** The Sentencing Policy Committee supports the sealing of criminal history records, post-expungement, so that employers and law enforcement will not have access to them.

IV. STATE FUNDING OF INDIGENT DEFENSE

Larry reported on Chief Justice Shepard's recommendation that the state provide full funding of indigent defense. Larry made the following points.

Currently counties spend approximately \$60 million on indigent defense and are reimbursed \$15 million through the public defense fund. The fund is chronically underfunded and reimbursement is routinely pro-rated. The total cost of indigent defense is estimated to be \$70 million per year. Pressure on the counties will increase when the property tax cap hits. The CJ recommended a five-year phase in of the program. Because the current financial picture for the state is not good, it is not realistic to introduce legislation this session. Instead the CJ wants to appoint a working group to have a bill ready for next session. The governor will do what he can to help but will not spend political capital to do so. Bill Crawford supports it. Larry mentioned the following issues: upping the initial funding to the counties to 80%; the CJ can use his rule making authority to make changes to the indigent defense delivery system keeping the PD Commission as an umbrella group; a State Public Defender is needed to deal with issues

on behalf of the PD Commission. The Public Defender Council needs resolve outstanding issues and come up with a proposal for state funding of indigent defense or take the risk of the CJ instituting his own plan.

Discussion centered around: dividing the state into regions or districts with each region having a director, having one central authority whether a Chief PD or executive director, the counties' desire to maintain autonomy, devising a method to measure and maintain quality service to indigent defendants.

Discussion regarding regions/districts included:

- how the central authority and regional directors would be selected
- the relationship of regional directors to counties
- what kind of control over local public defenders would the central authority have
 - county chief PDs are resistant to this – they want local control
- does this create just more bureaucratic levels and is the state going to be willing to spend millions of dollars to maintain offices and people who don't handle cases
- would counties be allowed to opt out and if so, does this defeat the purpose
 - the CJ is leaning toward allowing opting out, but doing so would mean no state money to the county

A primary area of concern continues to be quality control and the need to design a delivery system that guarantees quality service. Discussion included:

- the need for a model for counties to implement
- the fact that the counties will want to maintain local control through PD boards
- a regional director is needed to insure delivery of quality services
- perhaps the regional director could work with county PD boards
- many local PD boards are made up of non-attorneys; restructuring of the boards may be necessary
- If there is a quality control problem how is it corrected

The Board agreed that:

- A state Chief Public Defender/Director is necessary who is:
 - selected by the PD Commission
 - the Commission selected by districts
- County chiefs like things the way they are
- A bottom rate of pay needs to be mandated
- A regional director is needed to insure delivery of quality services
- The regional director should have authority to make changes to the county system
- IPDC's performance guidelines should be incorporated as standard of performance
- A process is needed to evaluate performance based on these standards.

Questions remaining:

- Will counties have the option of opting out of the system (doing so would mean no state funding)
- Who appoints regional directors?
- How much control does the central authority have over regional directors and local PDs
- How strong should the central authority be?
- What role will the PD Commission play regarding policy, plans
- What authority does the PD Commission have over the State PD/Executive Director?
- Who judges the quality of the local public defenders.

V. NEXT BOARD MEETING

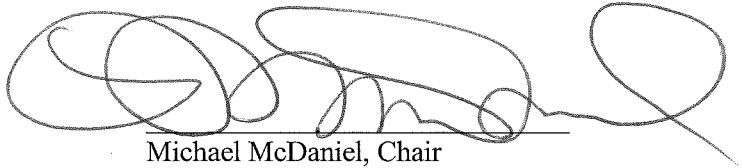
The next meeting of the Board of Directors will be on Saturday, January 31, 2009 at 1:00 PM, location to be decided.

The meeting was adjourned at 8:37 PM.

Prepared by Loretta Jackson, Executive Assistant.

Submitted:


Michelle Kraus, Secretary


Michael McDaniel, Chair

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INDIANA PUBLIC DEFENDER COUNCIL

**Board Meeting
September 20, 2008
Potawatomi Inn
Angola, Indiana**

MINUTES

I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council (IPDC) was called to order by Chair David Hennessy at 9:00 AM in the Director's Room of the Potawatomi Inn. Board members present were Zaki Ali, David Cook, David Hennessy, Michelle Kraus, Jeff Lockwood, Mike McDaniel, Sonya Scott and Neil Weisman. Staff present were Larry Landis, Paula Sites, Don Murphy, Jodie English and Loretta Jackson. Noble County Chief Public Defender James Abbs was also in attendance.

II. APPROVAL OF MINUTES

The Minutes of the January 18, 2008 meeting were unanimously approved.

III. EXECUTIVE DIRECTOR'S REPORT

A. GOALS

1. Legislation

Larry reviewed the Council's legislative goals for the upcoming session.

- Legislation to prohibit the execution of the mentally ill has been promised a hearing.
- Requiring counsel for juveniles prior to waiver to adult court has a sponsor.
- Mandatory taping of custodial interrogations has a sponsor.
- He is working with a coalition of interested groups to increasing funding for forensic diversion by increasing the alcohol tax.
- Expanding the right to expungement of arrest and reversed or vacated convictions has some support in the Sentencing Policy Study Committee.

Other legislation of interest:

- David Hennessy noted that a GBMI verdict requires that the defendant be immediately incarcerated, while a plain guilty verdict allows the defendant to remain out on bail until sentencing. He would like to see that portion of the statute repealed.
- Larry reported that the Sentencing Policy Study Committee has acknowledged that the 1000 feet of school enhancement for drug dealing offenses has a racial disparity impact. The Indiana State Bar Association also has a study showing the same thing.
- Neil Weisman stated that in St. Joseph County prosecutors are applying the "child care facility" enhancement to include in-home baby sitters.

2. Improving effectiveness of our members

- Larry requested suggestion for improving participation in our on-line seminars.
- The Council will continue to provide Lexis access to our members through subscriptions.
- Larry is working with Lexis to create a searchable database that would include the casebank and manuals which would include hypertext links from a case name to the full case in Lexis.

B. PUBLIC DEFENDER LEGISLATION

James Abbs, Chief Public Defender of Noble County, reported on the Chief Public Defenders Association's proposal regarding state funding of indigent defense services. The chief public defenders believe that the current system of local and state funding is working and it would be best to modify this system than create a new system with 100% state funding. He made the following recommendations on behalf of the chief public defenders:

1. The current system gives the counties:
 - a. independence from the judges and the state;
 - b. leverage with their county councils;
 - c. flexibility to create a program that fits the count's needs; and
 - d. insulation from state budget cuts that happens in states with 100% state funding
2. The Indiana Public Defender Commission should appoint one county public defender board member in place of one of the judicial appointments.
3. Reimbursement in non-capital cases should be increased to 50%.
4. Reimbursement in non-capital cases should provided in all cases, including misdemeanors.
5. 100% state funding might result in an increase in death penalty filings.
6. They do not oppose the creation of a statewide appellate office, but counties should have an option to retain control over the appointment if they have a county office with an appellate division. Funding for county appellate divisions was not discussed by the Chiefs.

The Board discussed the chiefs recommendations. Among the issues discussed were quality control, accountability, judicial control over the public defender boards and appointment of counsel, and the salary of the Chief Public Defender. In some counties, the chief public defender is the highest county paid person and this creates resistance to opt into the reimbursement system. The Board reaffirmed their support of the chiefs recommendation that the State should pay the salary of the Chief Public Defender, just as they do for the Prosecuting Attorney.

There was no resolution of the problems caused by the lack of measurements, results or outcomes by which the quality of representation could be objectively measured. There was a consensus that more work was need to devise a system to define and measure the quality of service. Don Murphy volunteered to contact managing partners of several large law firms to find out how they measure quality of representation.

Larry reported that there is no legislation currently pending or drafted to create a state-wide

system. However, he recommended that it was important that we have positions ready in the event there is movement on creating a state funded indigent defense system.

IV. TRAINING

Jodie English presented a training report. Since last year's retreat, the Council has had 8 interactive on-line training sessions. By the end of this calendar year, we will have 26 hours of videotaped training available. To publicize the availability of this training, it was suggested that we show an example at the Annual Update seminar.

David Hennessy stated that the mentoring program is missed and asked what happened to the plan to have local mentors. Don Murphy reported that in Vigo County the mentoring program consisted of having all the attorneys in the office brainstorm a particular case, with the mentor acting as facilitator. Larry said we could train facilitators or mentors to provide this service in counties but we do not have the funding to pay for the mentoring.

V. PUBLICATIONS

Paula Sites reported on the two new manuals published this year: Appellate Advocacy and Representing Clients with Mental Illness. She also reported that the Council contracted with Amy Karozos to write a Termination of Parental Rights manual which will be ready for sale at the TPR seminar in August 2009.

VI. RESEARCH

Larry proposed allowing the Council attorneys (Jack and Stacy) to act as co-counsel to public defenders in high impact cases. Participation would be limited to cases outside the appointed counsel's normal practice, such as interlocutory appeals and writs of mandamus. The procedure for approval of participation would include approval by Paula Sites

Jeff Lockwood noted that local attorneys may not recognize a "high impact" case and asked that the Council identify issues for public defenders.

VII. CRIMINAL JUSTICE AND POLICY

A. Retention Schedule for Case Files

Larry presented a proposal for the retention schedule of criminal case files under consideration by the Indiana Supreme Court Rules Committee. It includes a 55 year retention for felony case files. It was agreed that this could cause a financial hardship for attorneys to store files for that long. Dave Cook said there needs to be an electronic storage alternative. The board requested that Larry send out more detailed information on this proposal to the board.

B. Expedited Appeal

Under HEA 1001, the Department of Child Services (DCS) of FSSA may initiate an expedited appeal in a delinquency or CHINS case in which the court does not follow DCS's recommendation regarding placement or services and the judge makes a finding that the placement and/or services are necessary. One of the unknowns is whether a plea agreement is binding if the court accepts the plea and the DCS refuses to pay for the placement or services ordered. The Council approved Larry's recommendations that the proposed rule include a provision that if the DCS does not

approve payment of the placement or services either party may vacate the plea agreement, and a process for an expedited appeal by the child to any order for a out-of-home placement.

VIII. BUDGET

The Council grant included funds for a case management system. Because JTAC has agreed to create a public defender application for their Odyssey case management system, some grant funds will probably be used to pay JTAC for the development of this application.

IX. NEW BUSINESS

None

X. ELECTION OF OFFICERS:

The following officers was nominated and unanimously approved for FY 2008-09:

Chair: Mike McDaniel
Vice-Chair: Dave Cook
Secretary: Micki Kraus

XI. COMMITTEE ASSIGNMENTS:

Training: Mike McDaniel, Chair; Dave Cook, Bob Hill, Sonya Scott, Zaki Ali, Andy Maternowski, Pat Arata

Publications: Micki Kraus, Chair; Dave Cook, Neil Weisman

Technology: Lorinda Youngcourt, Chair; Zaki Ali, Jeff Lockwood, Andy Maternowski

Policy and Liaison: David Hennessy, Chair; Neil Weisman, Susan Carpenter, Bob Hill

Indigent Defense Delivery Systems: Dave Cook, Chair; Mike McDaniel, Neil Weisman; David Hennessy, Lorinda Youngcourt, Jeff Lockwood, Susan Carpenter, James Abbs

XI. UPCOMING BOARD MEETINGS

The Indigent Defense Delivery System subcommittee will meet on Thursday, December 11, to discuss public defender legislation. The full Board will meet in January 2009 to discuss the upcoming legislative session.

The meeting was adjourned at 3:05 PM.

Prepared by Loretta Jackson, Executive Assistant

Respectfully submitted:

Sonya Scott, Secretary

Date: _____

Approved: _____
David Hennessy, Chair

Date: _____

INDIANA PUBLIC DEFENDER COUNCIL

Board Meeting

January 18, 2008

Conrad Hilton, Indianapolis, IN

I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council (IPDC) was called to order by Chair David Hennessy at 6:40 p.m. in the New York Board Room at the Conrad Hilton, Indianapolis, Indiana. Board members present were Zaki Ali, Susan Carpenter, Mike McDaniel, Neil Weisman, and Lorinda Youngcourt. Executive Director Larry Landis was also present.

II. APPROVAL OF THE MINUTES

The minutes of the December 7, 2007 meeting were unanimously approved.

III. PENDING LEGISLATION REVIEW

The Board of Directors unanimously approved those position recommendations of Executive Director Landis, except for HB1173 Ignition interlock devices (Duncan). The Board recommended opposing part 1 of the bill and supporting part 2 of the bill. As concerns those bills for which he made no recommendation, the Board unanimously agreed to the following positions:

- A. HB1032 Child seduction (Battles) – no position
- B. HB1040 Hidden compartments in vehicles (Reardon) – no position
- C. HB1042 Intent to sell sexually explicit products (Goodin) – no position
- D. HB1076 Bias crimes (Porter) – no position
- E. HB1130 Kernan-Shepard study committee (Crooks) – support
- F. HB1144 Failure to report a dead body (Pelath) – no position
- G. HB1178 Controlled substances (Crouch) – no position
- H. HB1190 Contraband in penal facilities; public nuisances (Leonard) – opposed
- I. HB1191 Personal information (Avery) – opposed
- J. HB1232 Criminal history checks (Hoy) – support
- K. HB1254 Animal cruelty (Thomas) – oppose
- L. HB1259 Child safety and CHINS (VanDenburgh) – oppose
- M. HB1271 Inmate credit time (Stemier) – support part 1 of the bill and oppose part 2 of the bill
- N. HB1276 Bail (Pflum) – support
- O. HB1285 Limit on sex offender as guardian or custodian – opposed
- P. HB1369 Defenses to controlled substance offenses (Davis) – opposed
- Q. HB1376 Drug courts and children in need of services (Bell) – opposed
- R. HB1377 Crimes of violence (Bell) – opposed
- S. SB0014 Elimination of state property taxes (Lawson, Boots) – no position
- T. SB0023 Animal fighting contests (Arnold) – no position
- U. SB0054 Representation of judges in mandate litigation (Boots) – support with amendment that counsel be paid according to Indiana Supreme Court indigent defense counsel order of \$60/hour
- V. SB0065 Possession of handguns (Nugent) – support
- W. SB0066 Firearms in locked vehicles (Nugent) – support
- X. SB0084 Sex offender notification (Steele) – opposed
- Y. SB0085 Ballistic knives (Steele) – no position

- Z. SB0117 Parole issues (Charbonneau) – opposed
- AA. SB0124 Child seduction (Delph) – opposed
- BB. SB0132 Definition of “serious bodily injury” (Drozda) – opposed
- CC. SB0139 Violation of probation (Bray, Foley) – support
- DD. SB0155 Study on domestic violence program (Miller, C. Brown) – no position
- EE. SB0157 Opioid treatment programs (Miller) – no position
- FF. SB0171 Crimes against persons with disability (Lanane) – oppose
- GG. SB0179 Bail and recovery agent continuing education (Lubbers) – no position
- HH. SB0180 Child abduction and seduction (Lubbers) – opposed
- II. SB0183 Carrying a handgun without a license (Drozda) – support
- JJ. SB0184 Use of DNA evidence (Zakas) – opposed
- KK. SB0199 Environmental crimes (Bray, Gard) – opposed
- LL. SB0207 Public records and criminal offenders (Walker) – no position
- MM. SB0270 Jail inmate health care (Wyss, Arnold) – support
- NN. SB0281 Convictions and elections (Mrvan) – no position
- OO. SB0305 Controlled substances (Steele) – no position
- PP. SB0306 Bias crimes (Lanane) – no position
- QQ. SB0354 Parole eligibility (Broden) – support

IV. INDIGENT DEFENSE SYSTEMS

Executive Director Landis reported that IPDC has collected information on individual county indigent defense expenditures and means of providing counsel.

V. BOARD RETREAT

Discussion was held on the most suitable dates for the 2008 Board Retreat. No unanimous decision was reached.

VI. NEXT BOARD MEETING

A date to be determined in April 2008.


The meeting was adjourned at 8:20 p.m.

Respectfully submitted:

Sonya Scott, Secretary

Date: _____

Approved:



David Hennessy, Chair

Date: _____